

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STAR NORTHWEST, INC., d/b/a KENMORE LANES and 11th FRAME CASINO,

Plaintiff,

V.

CITY OF KENMORE and KENMORE CITY COUNCIL.

Defendants.

No. C05-2133MJP

ORDER GRANTING PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRANING ORDER AND
ORDER TO SHOW CAUSE

I. INTRODUCTION

This matter comes before the court on the ex parte motion of Plaintiff Star Northwest for a temporary restraining order (Dkt. # 2). As outlined below in the court's findings of fact and conclusions of law, the court GRANTS Plaintiff's motion to preserve the status quo and orders the parties to appear on Wednesday, January 25, 2006, at 9:00 a.m. for a hearing on Defendants' Response to this Court's Order to Show Cause why a Preliminary Injunction should not issue in this matter.

II. FINDINGS OF FACT

1. Plaintiff is a Washington corporation operating the Kenmore Lanes card room, bowling alley, and restaurant facility in Kenmore, WA.
2. The City of Kenmore (“the City”) and the Kenmore City Council (“the Council”) are Defendants in this matter. The City is a Washington municipal corporation and the

1 Council is the City's legislative body. Plaintiff alerted Defendants that it was filing a
2 motion for a temporary restraining order in this case, though no evidence has yet been
3 received by the Court that Defendants have been served with the Complaint or the
4 Motion and other pertinent documents in this case.

5 3. On December 19, 2005, the Council passed Kenmore Municipal Ordinance 05-0237
6 ("the Ordinance") banning social card rooms in the city of Kenmore. The
7 Ordinance's effective date is December 29, 2005. Plaintiff alleges that enforcement
8 of this Ordinance will result in an immediate closure of the Kenmore Lanes facility.
9 4. Plaintiff claims that enforcement of this Ordinance would constitute an unlawful
10 taking under the Fifth Amendment and a violation of the Fourteenth Amendment's
11 substantive due process protections. Additionally, Plaintiff alleges that enforcement
12 of the Ordinance would be contrary to Washington law.
13 5. Plaintiff alleges that it will suffer irreparable harm in the form of loss of community
14 goodwill if it is forced to close. Plaintiff also states that it will be compelled to lay off
15 most of its 220 person workforce, many of whom are longtime employees of Kenmore
16 Lanes and who have irreplaceable institutional knowledge.
17 6. Plaintiff alleges that the Defendants in this matter will suffer little harm if the status
18 quo is preserved. Conversely, Plaintiff states that they will suffer irreparable harm, as
19 well as significant economic losses if the ordinance is enforced to compel its closure.

20 **III. CONCLUSIONS OF LAW**

21 1. The court has jurisdiction over this matter pursuant to 42 U.S.C. § 1983. Plaintiff is
22 claiming injuries under the Fifth and Fourteenth Amendments of the U.S.
23 Constitution, as well as violations of Washington state law.
24 2. In order to obtain a temporary restraining order, Plaintiffs must meet the standards for
25 issuing a preliminary injunction. Stuhlbarg Int'l Sales, 240 F.3d at 839 n.7 (noting
26

1 that preliminary injunction and temporary restraining order standards are
 2 “substantially identical”).

3. In order to obtain a preliminary injunction, Plaintiffs must meet either the Ninth
 4 Circuit’s “traditional” or “alternative” test. The traditional test requires the court to
 5 find that:

6 (1) the moving party will suffer irreparable injury if the relief is
 7 denied; (2) the moving party will probably prevail on the merits;
 8 (3) the balance of potential harm favors the moving party; and (4)
 9 the public interest favors granting relief.

10 Cassim v. Bowen, 824 F.2d 791, 795 (9th Cir. 1987).

11 4. The alternative test requires the court to find that: “(1) a combination of probable
 12 success and the possibility of irreparable injury or (2) that serious questions are
 13 raised and the balance of hardships tips sharply in its favor.” Id. (citations
 14 omitted).

15 5. The two prongs of the alternative test are not separate inquiries, but rather
 16 “extremes of a single continuum.” Clear Channel Outdoor, Inc. v. City of Los
 17 Angeles, 340 F.3d 810, 813 (9th Cir. 2003). A strong showing of hardship means
 18 that a plaintiff need not show as strong a likelihood of success, and vice versa.

19 6. See id.

20 6. The court’s ultimate decision on a motion for preliminary injunction is within its
 21 discretion. Cassim, 824 F.2d at 796.

22 7. Under Fed. R. Civ. P. 65(b), an ex parte temporary restraining order can issue only
 23 if:

24 (1) it clearly appears from specific facts shown by affidavit or by
 25 the verified complaint that immediate and irreparable injury, loss,
 26 or damage will result to the applicant before the adverse party or
 27 that party’s attorney can be heard in opposition, and
 28 (2) the applicant’s attorney certifies to the court in writing the
 29 efforts, if any, which have been made to give the notice and the
 30 reasons supporting the claim that notice should not be required.

1. The court finds that the record reveals that Plaintiffs have alerted Defendants
2. telephonically that they intend to seek injunctive relief in this matter, and that
3. those efforts are sufficient to satisfy Fed. R. Civ. P. 65(b)(2).

4. The court finds that Plaintiff has made out a prima facie case that it will be able to
5. succeed on the merits of at least its 42 U.S.C. §1983 claim that Defendants
6. deprived it of its substantive due process rights under the Fourteenth Amendment
7. to the U.S. Constitution.

8. The court finds that it is likely that Plaintiff will suffer immediate and irreparable
9. harm in the form of loss of community goodwill if the Ordinance is enforced and
10. Plaintiff is forced to close.

11. The court finds that Defendants will suffer little or no hardship from preserving
12. the status quo ante pending the resolution of Plaintiffs' preliminary injunction
13. motion. For this reason, the Court finds that the balance of hardships weigh in
14. favor of granting a temporary restraining order against enforcement of the
15. Ordinance in this matter.

16. IV. TEMPORARY RESTRAINING ORDER AND SHOW CAUSE ORDER

17. Defendants and their representatives and employees are enjoined from enforcing
18. Kenmore Municipal Ordinance 05-0237 pending the preliminary injunction hearing in
19. this matter.

20. Defendants are ordered to respond to this Court's Order to Show Cause why a
21. Preliminary Injunction should not issue in this matter in writing by the end of the day on
22. Tuesday, January 17, 2006. Plaintiff may file a written reply no later than the end of the
23. day on January 23, 2006. Neither Defendant's response, nor Plaintiff's reply shall
24. exceed twelve (12) pages in length. The preliminary injunction hearing will be held in
25. this matter at 9:00 a.m., January 25, 2006 before Honorable Marsha J. Pechman. Each
26. side shall have thirty (30) minutes to make its presentation, including rebuttal.

1 This temporary restraining order shall continue in effect until the court issues an
2 order on Plaintiffs' motion for a preliminary injunction.

3 Plaintiff shall file an undertaking or bond with the court in the sum of \$5,000. The
4 above order shall not take effect shall not take effect until Plaintiff files the requisite
5 undertaking or bond with the Court.

Dated this 29th day of December, 2005 at 4:00 p.m.

/s/James L. Robart

James L. Robart

United States District Judge